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share at its value at the end of the war, whether decreased or increased. Here at least he may to a limited extent share in profits. In addition he would as a practical matter have to pay any call assessed after the end of the war, because of the impossibility of showing it resulted from losses incurred during the war. So unless he is given full rights to profits made during the war, he would be subjected to all the risk of loss with a chance for only a small share of the profit. Consequently the writer maintains that, generally speaking, shareholders should remain shareholders in fact, entitled to profits earned as well as liable for losses incurred during hostilities. This argument, it is submitted, strikes at one of the fundamental reasons for the dissolution of partnerships. If it is not illegal to share in profits of trade in the enemy's country, then the only reason for the dissolution of partnerships is that the power of mutual control is gone. In many partnerships this power does not exist. It seems, however, that the writer's views are in accordance with the modern tendency to minimize the effect of war on commercial relations and, though he has taken a long step, it is quite possible that the courts will follow him.

LIFE, BIRTH, AND LIVE-BIRTH.—Few attempts have been made by legal writers to deal with this subject, either as an original question, or in the light of the decided cases. The propositions of law involved seem to be, for the most part, in an unsettled state, and a cursory examination of the authorities affords the reader little enlightenment. Such a comprehensive treatment of these questions as appears in a recent article is, therefore, both timely and noteworthy. *Life, Birth, and Live-birth*, by Stanley B. Atkinson, 20 L. Quart. Rev. 134 (April, 1904). The writer displays a wide knowledge of these topics, not only in their legal, but also in their physiological aspects, his treatment of them being scholarly and exhaustive, and supplemented by a careful collection of the English authorities. The subject is dealt with in five of its important phases. I. A Child. In the criminal law the stage of development at which a foetus becomes a child is important. For example, it is only after this stage of pregnancy that execution will be stayed in the case of a sentenced murderess. Again, a definition of a child is necessary under statutes dealing with the concealment of the birth of children. The definition suggested is that a child is a human foetus which is born, alive or dead, at such stage of uterine development as experience shows is necessary for capacity to survive birth, namely, at least five calendar months after conception. II. Birth. It is well settled that the instant of nativity is when the last part of the body of the foetus is wholly extruded from the body of the mother. The after-birth, which is not legally considered as an integral part of the child, need not be expelled nor the cord be severed. III. Live-birth. The child begins its existence as a legal personality when the foetus is born alive into the world. Up to this time it is not a subject of murder; consequently a fixed test of the consummation of live-birth is of great practical importance in the cases of infanticide that so often arise. The common judicial view is that the child must have a postnatal separate and independent existence. What physiological facts are sufficient to constitute this independent vitality is not determined by the cases. It would seem that at least a postnatal continuance of the circulation must occur, although in practice still-birth, which may be accompanied by continuance of the circulation, is generally regarded as dead-birth, and respiration is taken as the rough test of live-birth. IV. The Proof. The presumption of the law is that a child is born dead. Live-birth must be established by valid evidence. Circumstantial evidence, as to the condition of the body for example, is usually sufficient where the child has lived long enough for respiration to become fully established. Where this is not the case, however, live-birth can ordinarily be efficiently proved only by the direct evidence of one present at the parturition as to the birth and the subsequent exhibition of a sign of life. V. The Status of the Foetus *en ventre sa mère*. The foetus acquires a status in civil law much earlier than its legal personality is recognized in criminal law. For proprietary rights the foetus is considered as a potential child at every stage of gestation.

SURVIVORSHIP. — The Iroquois Theatre fire has called forth a recent article on the question of survivorship in a common disaster. *Problems of Survivorship*, by Clarke Butler Whittier, 16 Green Bag 237 (April, 1904). After stating the law to be at last well settled in England and America that there are no presumptions of survivorship, but that the person having the burden of proof must, in the absence of evidence, fail, the writer lays down a general rule derived from the authorities, by which one can readily determine in what cases there is a burden of proving survivorship and upon whom it rests. His proposition is that "any claimant has the burden of proving survivorship so far as it is essential to his own chain of title, but he need not establish it for the purpose of disproving his opponent's chain of title, even though the latter, if established, would be superior to his own." For example, where devisee and testator perish in a common disaster the heirs of the latter succeed without proving survivorship of the testator. The rule stated is a simple one, and arises naturally from principles of common law pleading, but it has not hitherto been laid down in this connection with such accuracy, nor has it always been recognized by courts in dealing with the cases. The article further commends itself to the reader by its full collection of authority and the able manner in which the cases are discussed.

ACTUAL DECISION IN THE MERGER CASE, THE. *Bruce Wyman*. 16 Green Bag 258.

ADVOWSONS AND CHARITABLE TRUSTS. *Anon.* 116 L. T. 495.

"AFFECTING" OF CONTRACTS BY STATUTE, THE. *E. F.* Discussing how far statutes which give rise to and apportion new liabilities between persons of different classes, affect contracts between those persons relating to the matter in question. 116 L. T. 470.

AMENDMENT OF CASE STATED. *Anon.* Discussing ways in which amendments of cases stated for a higher court may be made. 68 Justice of P. 169.

ASSIGNMENT OF COUNSEL, THE. *H. N. G.* Arguing that counsel appointed to defend indigent prisoners can recover from the county the value of his services. 8 Law Notes (N. Y.) 246.

BANKERS' LIENS ON SECURITIES PLEDGED TO THEM BY BROKERS. *Charles M. Holt*. Discussing *Lord Sheffield v. London Joint Stock Bank*, 13 App. Cas. 333. 3 Can. L. Rev. 144.

CHARACTER-EVIDENCE IN CIVIL CASES. *William Trickett*. Discussing Pennsylvania law. 8 Forum (Dickinson) 165.

CHARACTER-EVIDENCE IN CRIMINAL CASES. *William Trickett*. Discussing Pennsylvania law. 8 Forum (Dickinson) 121.

CIVIL JURY, THE. *A. Caperton Braxton*. 38 Am. L. Rev. 220.

CODIFICATION OF THE DOCTRINE OF RESCISSION. *Francis M. Burdick*. 4 Columbia L. Rev. 264.

COMPENSATION TO YEARLY TENANTS. *Anon.* Discussing cases where land occupied by yearly tenants is taken under Act of Parliament. 68 Justice of P. 170.

CONCERNING THE NEED OF CREATING ADVOCATES OR DEFENDERS FOR THE ACCUSED. *W. D. Sutherland*. 3 Can. L. Rev. 215.

CONSTITUTIONAL LAW OF THE UNITED STATES AS MOULDED BY DANIEL WEBSTER. *Everett P. Wheeler*. 12 Am. Lawyer 148.

CONSTRUCTION OF STATUTE MAKING IT CRIMINAL FOR MEMBERS OF CONGRESS TO SELL THEIR INFLUENCE. *Anon.* 58 Central L. J. 341.

CRIMINAL LIABILITY OF PUBLICANS FOR THE ACTS OF SERVANTS. *Anon.* Consideration of the question as governed by English statutes. 68 Justice of P. 159.

"DAYS OF GRACE." *Anon.* Discussing the subject in connection with fire insurance and bills of exchange. 116 L. T. 542.

DOCTRINE OF CONTINUOUS VOYAGES, THE. *Charles B. Elliott*. 13 Yale L. J. 289.

EARLY AMERICAN MARRIAGE LAWS. *R. Vashon Rogers*. 3 Can. L. Rev. 133.

EFFECT OF SLAVERY UPON THE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND OF THE STATE OF ALABAMA, THE. *Edward De Graffenreid*. 12 Am. Lawyer 151.

EXTRATERRITORIAL POWERS OF RECEIVERS: Rights of Action in Foreign Courts. *Walter F. Lutz*. 58 Central L. J. 284.

FOREIGN INVESTMENTS IN TIME OF WAR. *Robert Agar Chadwick*. 20 L. Quart. Rev. 167. See *supra*.

- FRENCH JURY SYSTEM, THE. *Simeon E. Baldwin*. 2 Mich. L. Rev. 597.
- HINDU AND MAHOMEDAN RELIGIOUS ENDOWMENTS—WAKFS. *Anon.* 14 Madras L. J. 1.
- INTENT TO DECEIVE OR DEFRAUD. *Herbert Stephen*. Discussing the meaning of the words "with intent to deceive or defraud," as they occur in the English Larceny Act. 20 L. Quart. Rev. 186.
- INTER-INSURANCE. Its Legal Aspects and Business Possibilities. *Robert J. Brennan*. 58 Central L. J. 323.
- IS CONGRESS A CONSERVATOR OF THE PUBLIC MORALS? *William A. Sutherland*. Commenting adversely upon a recent decision of the United States Supreme Court that lottery tickets are articles of commerce. 38 Am. L. Rev. 194.
- JAPANESE LAW AND JURISPRUDENCE. *A. H. Marsh*. 38 Am. L. Rev. 209.
- JOINT STOCK CORPORATIONS LAW. *Joseph Bowden*. Suggesting a national incorporation law. 3 Can. L. Rev. 147.
- JUDICIAL HISTORY OF INDIVIDUAL LIBERTY, THE. PART IV. *Van Vechten Veeder*. 16 Green Bag 247.
- JUSTICE OF THE PEACE, THE. *Anon.* A plea for the retention of the office in the judicial system. 1 North Carolina J. of L. 157.
- JUSTICES EQUALLY DIVIDED IN OPINION. *Anon.* Discussing the courses open to justices in such a case. 68 Justice of P. 182.
- KEEPING OILS FORBIDDEN BY POLICIES OF INSURANCE. *W. W. Thornton*. 58 Central L. J. 343.
- LEAVES FROM A LAWYER'S NOTE BOOK. OATHS ADMINISTERED WITHOUT THE USE OF THE BIBLE. *Charles W. Tillett*. 1 North Carolina J. of L. 166.
- LIABILITY OF MUNICIPALITY FOR FAILURE OF ITS OFFICERS TO ENFORCE ORDINANCES. *John G. Farmer*. 40 Can. L. J. 253.
- LIFE, BIRTH, AND LIVE-BIRTH. *Stanley B. Atkinson*. 20 L. Quart. Rev. 134. See *supra*.
- LOGICAL CONVEYANCING. *T. F. Martin*. A tribute to "Davidson's Precedents." 20 L. Quart. Rev. 195.
- MODERN LAW OF CHARITIES AS DERIVED FROM THE STATUTE OF CHARITABLE USES, THE. *Rupert Sargent Holland*. 52 Am. L. Reg. 201.
- NATIONAL SUPERVISION OF INSURANCE AND PAUL v. VIRGINIA. *John W. Walsh*. Discussing the power of Congress to regulate insurance as commerce or otherwise. 38 Am. L. Rev. 181.
- NATURAL-BORN CITIZEN OF THE UNITED STATES. Eligibility for the Office of President. *Alexander Porter Morse*. 66 Albany L. J. 99.
- NEGLIGENCE OF RAILWAY COMPANIES IN CANADA. Railway Act of 1903. *C. H. Masters*. 40 Can. L. J. 215.
- NEW TRIAL AND VENIRE FACIAS DE NOVO: A DISTINCTION. *Murray Allen*. 1 North Carolina J. of L. 171.
- OBSERVATIONS ON THE ART OF ADVOCACY. *David Dundas*. 3 Can. L. Rev. 171.
- PEONAGE CASES, THE. *William Wirt Howe*. 4 Columbia L. Rev. 279.
- PHYSICIAN AS AN EXPERT, THE. I. *H. B. Hutchins*. 2 Mich. L. Rev. 601.
- PHYSICIAN ON THE WITNESS STAND, THE. *F. M. Hagan*. 49 Ohio L. Bulletin 195.
- PRINCIPLE AND LIMITATIONS OF LABOUR RIGHTS. *Frank E. Hodgins*. 24 Can. L. T. 91.
- PROBLEMS OF SURVIVORSHIP. *Clarke Butler Whittier*. 16 Green Bag 237. See *supra*.
- PROCEDURE IN THE COUNTY COURTS, THE. I. *Anon.* 38 Ir. L. T. 111.
- PROPOSED NATIONAL INCORPORATION LAW, A. *Horace L. Wilgus*. 2 Mich. L. Rev. 501.
- PROPOSED REFORMS IN MARRIAGE AND DIVORCE LAWS. *Amasa M. Eaton*. 4 Columbia L. Rev. 243.
- RECENT FOREIGN COPYRIGHT LAW. *Anon.* 116 L. T. 516.
- RECORDATION AND ACKNOWLEDGMENTS. *John Garland Pollard*. Discussing construction put by Virginia courts upon a state statute. 9 Va. L. Reg. 935.
- RELATION OF JUDGES TO GRAND JURIES, THE. *J. B. Mackenzie*. 40 Can. L. J. 255.
- RUSSIAN CIVIL LAW. *William W. Smithers*. 52 Am. L. Reg. 137, 213.
- SALES OF LEASEHOLDS BY PERSONAL REPRESENTATIVES. *Anon.* Discussing the length of time within which the right of sale may be exercised. 38 Ir. L. T. 135.
- SINGING v. MIMICRY. *Anon.* Criticising *Bloom v. Nixon*, 125 Fed. Rep. 977. 8 Law Notes (N. Y.) 249.
- STATUTORY ESTATES IN PLACE OF AN ESTATE TAIL. *Albert Martin Kales*. 13 Yale L. J. 267.
- SUBSTITUTED FREIGHT. *H. Birch Sharpe*. Discussing the right of the underwriter, in case of the destruction of the original cargo, to freight earned on a substituted cargo. 20 L. Quart. Rev. 160.

- TEACHING OF SIR HENRY MAINE, THE. *Paul Vinogradoff*. 20 L. Quart. Rev 119.
 ULTRA VIRES AND ESTOPPEL. *Anon.* 44 Leg. Adv. 53.
 VALIDITY OF AGREEMENT FOUNDED ON A NEW CONSIDERATION BUT GIVEN IN
 PAYMENT ON ILLEGAL CONTRACT. *Anon.* 58 Central L. J. 321.
 WHETHER A CONSIDERATION IS NECESSARY TO A WAIVER. *Colin P. Campbell*.
 58 Central L. J. 264.
 WHETHER AN ATTEMPT TO BRIBE AN OFFICER WHO IS WITHOUT AUTHORITY TO
 ACT IS A CRIMINAL OFFENSE. *Anon.* Commenting upon one of the recent St.
 Louis bribery cases reported in 77 S. W. Rep. 560. 58 Central L. J. 281.

II. BOOK REVIEWS.

THE POLICE POWER. Public Policy and Constitutional Rights. By Ernst Freund, Professor of Law in the University of Chicago. Chicago: Callaghan & Company. 1904. pp. xcii, 819. 8vo.

In 1827, in the opinion in the case of *Brown v. Maryland*, Chief Justice Marshall introduced into our law the term "police power." A study of that case and the circumstances surrounding it leads to the conclusion that Marshall used the phrase merely as a synonym for the well-known "police laws," "regulations of police," etc. At any rate the term did not reappear in a judicial opinion until ten years later, after Marshall's death, in the case of *New York v. Miln*. By that time the abolition controversy had made the term familiar over the entire country. It had been seized on by the daily papers and political speakers, to express the "residuary sovereignty" of Madison. It is not surprising that this popular and wide-spread use had a marked effect upon the courts. In the License Cases we find Chief Justice Taney declaring that the police power of a state is "nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions." From this time on the police power has been given every phase of meaning, from the extended one of Taney to that of Mr. Hastings, who states that the "police power is a fiction."

The confusion in the use of the term has never been cleared up by the text-writers. The nearest approach is made in the present work by Professor Freund. The author explains his conception of the police power as follows: "The State places its corporate and proprietary resources at the disposal of the public by the establishment of improvements and services of various kinds; and it exercises its compulsory powers for the prevention and anticipation of wrong by narrowing common law rights through conventional restraints and positive regulations which are not confined to the prohibition of wrongful acts. It is this latter kind of state control which constitutes the essence of the police power." For the sake of clearness Professor Freund excludes from the police power all forms of State activity which do not operate by restraint and compulsion. But general statements are of little assistance in the discussion of this troublesome branch of our law. It is only by a detailed examination of statutes and decisions that this power can be at all understood. This examination is very carefully made by the present author. For this purpose he makes a three-fold division of the spheres of state activity: first, a conceded sphere, affecting safety, health, and morals; second, a debatable sphere, that of proper production and distribution of wealth, public convenience and advantage; third, an exempt sphere, that of moral, intellectual, and political movements. Professor Freund regards the first sphere as constituting the police power in its primary sense. Here is found an ever increasing amount of restrictive legislation, governed by principles which have become well established and which constitute a distinct branch of Constitutional Law. In the second sphere the police power is revealed, not as a fixed quantity, but as the expression of social, economic, and political conditions. Here it would be impossible to formulate general rules, and the examination of the author consists in showing what has been done, what has been attempted and has failed, and what is now being